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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application for:

    Kenyon et al.

Application No.: 09/399,065

Filed: September 19, 1999

For: A Player-Centric Method And Apparatus For Creating, Distributing And Consuming Content

Examiner: Saleh Najjar

Art Group: 2157

Confirmation No.: 1823

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Appellants' Reply Brief In Support Of Appellants' Appeal To The Board Of Patent Appeals And Interferences

Dear Sir:

This reply brief is submitted pursuant to 37 C.F.R. §1.193 in response to the Examiner's Answer mailed April 6, 2004. Appellants respectfully request consideration of this reply by the Board of Patent Appeals and Interferences in the appeal of the present patent application.

Issue I - Claim Group - Claims 1-10, 12-21 and 23-38

The issue before the Board is whether Li's InfoPyramid data anticipates the required **model data comprising geometric data**. The Examiner's answer merely

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repeated the faulty assertion that *Li* does so anticipate. The Examiner's answer failed to address Appellant's detailed reasoning why it DOES NOT. Again for the Board's convenience, in accordance with the plain meaning of the language as understood by those of ordinary skill in the art, geometry data is not video, image, text or audio data.

Geometry data are data used to *describe two and three-dimensional objects* within models (in contrast to the simple display of a bitmap of *image* data), by describing, for example, the object surfaces, represented by items such as splines, non-uniform rational splines (NURBs) and (monohedral) triangle tesselation.

Video data of different fidelity comprises pictures of pixel data encoded/compressed at different fidelity levels. Image data of different fidelity comprises bit maps of different resolutions. Textual data of different fidelity comprises character and symbol data with different font size attributes. Audio data of different fidelity comprises sound data rendered in one or more channels, i.e. mono, stereo, surround and so forth.

Accordingly, Li's InfoPyramid data do not anticipate the **model data comprising geometric data**. For at least this reasons, claims *1-10, 12-21 and 23-38* are allowable over Li.

Issue II - Claim Group II – Claims 8, 9, 19, 20, 32 and 33

The issue before the Board is whether *Li's* information describing a client device's resource and capabilities anticipates the required **performance indicator**. As with Issue I, the Examiner's answer merely repeated the faulty assertion that it does.

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The Examiner's answer failed to address Appellant's detailed reasoning why it DOES NOT. Again for the Board's convenience, in accordance with the plain meaning of the language as understood by those of ordinary skill in the art, performance indicators are not capabilities.

Capabilities are information describing whether the client has a graphics accelerator, and so forth. They are static. Current resources may include information describing the client's available memory and so forth. That's at best dynamic state data that can be used to <u>guess</u> whether the client may be under stress, as a client with low memory may nonetheless not under stress, if e.g. the client has a very efficient swapping capability or the workload does not demand large memory blocks.

Performance data such as response time, packet drop etc, are not only dynamic, reflective of the current client state, but gives a clear unambiguous indication whether the client is under stress.

Accordingly, Li's static or dynamic state data do not anticipate the required dynamic unambiguous **performance indicator**. For at least this reason, claims 8, 9, 19, 20, 32 and 33are allowable over Li.

Issue III - Claim Group III – Claims 11 and 22

The issue before the Board is whether the newly cited U.S. Patent 5,918,002 issued to Klemets ("*Klemets*") supports the Examiner's assertion that the concept and advantages of **proportionally** dropping audio data frames that arrive "too late" is old and well know in the data communication art.

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Klemets teaches making a determination on whether audio data that arrives has arrived after its usefulness is gone. If so, it is discarded. It is a teaching of a crude binary decision of too late vs not too late.

Whereas, Claim 11 on the other hand, among other things, requires automatic synchronization of rendering of the received model data that includes *dropping audio data **in proportional** to the amount of the time the audio data arrived late*. The requirement provides finer granularity in decision making, on asking how late is late, and the response action being non-binary but proportion of the relative lateness.

Thus, *Klemets* does not support the Examiner's assertion. Claims 11 and 22 are patentable over the cited references.

Conclusion

Appellants respectfully submit that all the appealed claims in this application are patentable and requests that the Board of Patent Appeals and Interferences overrule the Examiner and direct allowance of the rejected claims.

We do not believe any additional fees are needed. However, please charge any shortages and credit any overages to Deposit Account No. 500393.

Respectfully submitted,
Schwabe, Williamson & Wyatt, P.C.

Dated: 7 June , 2004

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